

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING )  
PHARMACY, INC. PRODUCTS LIABILITY )  
LITIGATION )  
\_\_\_\_\_ )

MDL No. 2419  
Dkt. No 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO: )

All Cases )  
\_\_\_\_\_ )

**TENNESSEE CLINIC DEFENDANTS' ASSENTED-TO  
MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT  
AMERIDOSE LLC'S MOTION TO PROCEED WITH FDA-AUTHORIZED  
DESTRUCTION OF RECALLED INVENTORY**

Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John W. Culclasure, MD; Debra V. Schamberg, RN; Specialty Surgery Center, Crossville, PLLC; Kenneth R. Lister, MD; Kenneth Lister, MD, PC; Donald E. Jones, MD (collectively "the Tennessee Clinic Defendants"), hereby move, with the assent of defendant Ameridose LLC ("Ameridose"), for an extension of time to September 25, 2014, to respond to Ameridose's Motion to Proceed with FDA-Authorized Destruction of Recalled Inventory (the "Motion") (Dkt. No. 1090).

In support of this motion, the Tennessee Clinic Defendants state as follows:

1. Ameridose filed its Motion on April 11, 2014, in which it asks the Court to authorize the destruction of various products which were returned to Ameridose in response to its voluntary recall of all products from the market ("Recalled Inventory").

2. The Tennessee Clinic Defendants requested certain information and documents from Ameridose to assist them in determining whether, and to what extent, the Recalled Inventory is relevant to their defense (or whether examination of that

inventory may lead to the discovery of other relevant and admissible evidence).

3. Counsel for Ameridose provided the Tennessee Clinic Defendants with a subset of the information requested, namely, spreadsheets that list all of the Recalled Inventory.

4. To allow the Tennessee Clinic Defendants the opportunity to review the Ameridose information and to meet and confer with Ameridose to determine whether Ameridose would provide additional information, the parties agreed to extend the time to respond to Ameridose's Motion to May 9, 2014 (Dkt. Nos. 1098, 1099).

5. After further discussions regarding the Recalled Inventory, the Tennessee Clinic Defendants and Ameridose reached an agreement with regard to the destruction of Ameridose's inventory of recalled "controlled substances."

6. The parties also agreed to extend the time to respond to Ameridose's Motion to May 23, 2014, to further narrow any disagreement on how to handle the remaining materials in the Recalled Inventory.

7. On May 22, 2014, the Court entered an order authorizing the destruction of these "controlled substances." (Dkt. No. 1138).

8. The Tennessee Clinic Defendants and Ameridose are continuing to meet and confer regarding how to handle the remainder of Ameridose's recalled product, but there is a fundamental disagreement regarding the appropriate scope of discovery of Ameridose in general. That issue is addressed in the pending Motion to Partially Lift the Discovery Stay of the Affiliated Defendants.<sup>1</sup> The Tennessee Clinic Defendants and Ameridose believe that resolution of the Motion to Partially Lift the Discovery Stay will

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<sup>1</sup> The PSC's original Motion to Partially Lift the Discovery Stay is at Dkt. No. 534. Several parties joined in that motion (e.g., Dkt. Nos. 1041, 1077), and Liberty filed a motion seeking similar relief at Dkt. No. 1229.

guide the parties in resolving or at least narrowing the issues raised by Ameridose's Motion.

9. Accordingly, the Tennessee Clinic Defendants request that the Court extend their response deadline to September 25, 2014.

10. Ameridose assents to the relief requested herein.

WHEREFORE, the Tennessee Clinic Defendants respectfully request, with the assent of Ameridose, that the Court grant its motion and enter an Order extending the Tennessee Clinic Defendants' time to respond to Ameridose's Motion to September 25, 2014.

Respectfully submitted,

/s/ Chris J. Tardio

**C.J. Gideon, Jr.<sup>2</sup>**

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Defendants***

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<sup>2</sup> Admitted pursuant to MDL Order No. 1.

<sup>3</sup> Admitted *pro hac vice*.

**LOCAL RULE 7.1(A)(2) CERTIFICATION**  
**AND CERTIFICATE OF SERVICE**

I, Chris J. Tardio, certify that our office conferred by e-mail with opposing counsel in an effort to resolve or narrow the issues presented in this motion prior to filing, and opposing counsel assents to the relief sought herein.

I further certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 25<sup>th</sup> day of August, 2014.

/s/ Chris J. Tardio

**Chris J. Tardio**